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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, ex rel.  
MARY HENDOW and JULIE ALBERTSON,

Plaintiff,

v.

UNIVERSITY OF PHOENIX,

Defendant.

CASE NO. CIV. S-03-0457 GEB DAD

**SUPPLEMENTAL JOINT STIPULATION OF  
DISMISSAL AND [PROPOSED] ORDER**

**[E.D. Cal. Local Rule 83-143]**

**[[Proposed] Order also filed concurrently  
herewith]**

Judge: The Honorable Garland E. Burrell, Jr.  
Place: Courtroom 10

1 The University of Phoenix (“University”) and Relators Mary Hendow and Julie Albertson  
2 (“Relators”) submit this Supplemental Joint Stipulation of Dismissal in response to the Court’s  
3 December 15, 2009 order. *See* Docket No. 344. In that order, the Court requested additional  
4 information about the settlement agreement reached between the University, Relators, and the United  
5 States Government. That information is summarized below and is set forth in more detail in the  
6 accompanying exhibits. The settlement agreement is attached as Exhibit A, and the Attorneys Fees  
7 Agreement is attached as Exhibit B.

8 **SUPPLEMENTAL JOINT STIPULATION**

9 WHEREAS, Relators filed this *qui tam* action under the federal False Claims Act on behalf of  
10 the United States on March 7, 2003.

11 WHEREAS, the government declined to intervene in this action on May 5, 2003.

12 WHEREAS, Relators filed their Second Amended Complaint in this action on March 3, 2004.

13 WHEREAS, the University answered Relators’ Second Amended Complaint on December  
14 20, 2006.

15 WHEREAS, Relators, the University, and the United States Department of Justice have  
16 entered into a settlement agreement to resolve this action, and jointly request for good cause shown  
17 that the Court dismiss all causes of action asserted by Relators in this action with prejudice as to both  
18 Relators and the United States, subject to the terms and conditions set forth in the parties’ agreements  
19 as presented to this Court and briefly summarized below.

20 WHEREAS, the settlement agreement provides that the University shall pay the United States  
21 \$67,500,000 (the “Settlement Amount”), and the United States shall release the University from  
22 certain civil or administrative claims, as further set forth in the settlement agreement. *See* Settlement  
23 Agreement, a true and correct copy of which is attached hereto as Exhibit A, ¶¶1, 3.

24 WHEREAS, the settlement agreement provides that the United States shall pay the Relators  
25 \$19 million, which is approximately 28.15% of the Settlement Amount, which amount reflects  
26 Relators’ efforts in initiating the action and litigating the case on behalf of the United States for more  
27 than six years. *See* Exhibit A, ¶1.  
28

1 WHEREAS, this amount is within the benchmarks provided for in 31 U.S.C. §3730(d)(2),  
2 which states that “the person bringing the action or settling the claim shall receive . . . not less than  
3 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid  
4 out of such proceeds.” 31 U.S.C. §3730(d)(2).

5 WHEREAS, 31 U.S.C. §3730(d)(2) provides that the Relators “shall also receive an amount  
6 for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable  
7 attorneys’ fees and costs.”

8 WHEREAS, in the more than six years of this litigation, Relators’ counsel reviewed more  
9 than a million pages of documents, took or defended approximately 40 depositions, responded to four  
10 motions to dismiss, a motion for partial summary judgment, and a Petition for Writ of Certiorari,  
11 prosecuted a Ninth Circuit appeal from the Order of Dismissal, brought or defended against more  
12 than a dozen discovery motions, interviewed scores of witnesses from throughout the county, worked  
13 with and obtained expert reports from several experts and were preparing to depose the University’s  
14 experts, and ultimately negotiated the settlement of this False Claims Act litigation.

15 WHEREAS, the University and the Relators have entered into a separate Attorneys’ Fee  
16 Agreement, which provides that the University shall pay Relators’ counsel \$11,000,000 to cover the  
17 cumulative fees and costs incurred by the five law firms that represented Relators during the more  
18 than six years of litigation. *See* Attorneys Fee Agreement, a true and correct copy of which is  
19 attached hereto as Exhibit B, ¶1.

20 WHEREAS, the Government’s agreement to pay the Relators \$19 million from the Settlement  
21 Amount was a matter of extensive discussion and negotiation between the Government and the  
22 Relators; and the University’s agreement to pay statutory fees and costs of \$11 million to the Relators  
23 was also the subject of extensive discussion and negotiation between the University and Relators.

24 WHEREAS, all parties have agreed that they will each bear their own costs and attorneys’  
25 fees with respect to this action, except as specifically set forth in the parties’ agreements.

26 WHEREAS, the Attorney General, through the Department of Justice, consents to the  
27 dismissal of this action based on its determination that the settlement of this action is an appropriate  
28 resolution of the allegations propounded by the Relators and will relieve the United States of any

further discovery costs and obligations.

ACCORDINGLY, pursuant to Local Rule 83-143, the parties, by and through their counsel of record, hereby stipulate to, **and request the Court's approval of the following:**

1. An order dismissing this action, and all causes of action asserted by Relators herein, with prejudice as to both Relators and the United States, for the reason that the parties have settled the action.
2. An order that the parties shall bear their own costs and attorneys' fees with respect to this action, except as specifically set forth in the parties' agreements.

IT IS SO STIPULATED.

DATED: December 16, 2009

By: /s/ James L. Zelenay, Jr.  
James L. Zelenay, Jr.

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*Attorneys for Defendant University of Phoenix*

Dated: December 16, 2009

By: /s/ Robert J. Nelson (as authorized Dec. 16, 2009)  
Robert J. Nelson

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*Attorneys for Mary Hendow and Julie Albertson,  
Relators*

1 CONSENTING TO DISMISSAL FOR THE UNITED STATES:

2  
3 DATED: December 16, 2009

BENJAMIN WAGNER  
United States Attorney

4  
5  
6 By: /s/ Kendall J. Newman (as authorized on Dec. 16, 2009)

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17 Counsel for the United States  
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**[PROPOSED] ORDER**

This Court, having considered the parties' Joint Stipulation of Dismissal, filed on December 14, 2009, and Supplemental Joint Stipulation of Dismissal, filed on December 16, 2009, as well as the United States' consent to that dismissal, finds good cause for dismissing this case. Specifically, the parties have entered into a settlement, which has also been entered into and approved of by the U.S. Department of Justice, to resolve this matter. Under this agreement, the University shall pay the United States \$67.5 million to resolve certain civil or administrative claims, as specifically set forth in the parties' Settlement Agreement, which has been filed with the Court. The Relators shall receive \$19 million, which is approximately 28.15% of this amount, pursuant to 31 U.S.C. § 3730(d)(2), and additionally the University shall pay Relators' counsel \$11 million to cover counsels' reasonable statutory fees and costs. Given the reasonableness of the parties' agreements and the fact the United States Department of Justice has approved the terms of the settlement, the Court orders as follows:

1. Relators' Second Amended Complaint shall be dismissed with prejudice as to Relators and as to the United States.
2. The parties shall bear their own costs and attorneys' fees with respect to this action, except for as specifically set forth in the parties' agreements.
3. This case is now CLOSED and dismissed.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
The Honorable Garland E. Burrell, Jr.  
United States District Court

**CERTIFICATE OF SERVICE**

I hereby certify that on December 16, 2009, the attached document, as well as the accompanying [Proposed] Order was electronically transmitted to the Clerk of the Court using the CM/ECF System which will send notification of such filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Cliff Palesfsky	<a href="mailto:uroy@aol.com">uroy@aol.com</a>
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I further certify that copies of the foregoing were sent on December 16, 2009, via email and overnight mail to the following parties not registered on the CM/ECF:

Jay D. Majors  
U.S. Department of Justice  
Civil Division  
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Washington, DC 20004  
E-Mail: Jay.Majors@usdoj.gov

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/s/ James L. Zelenay, Jr.